

UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

1625 South 900 West • PO Box 30408 • Salt Lake City, UT 84130-0408 • (801) 977-6800 • FAX (801) 977-6888

www.abc.utah.gov

“NON-TAVERN”

“ON PREMISE BEER LICENSE”

(GROSS SALES OF BEER ARE LESS THAN 50% OF TOTAL BEER AND FOOD SALES)

APPLICATION CHECKLIST

The items below should be completed and submitted by the **10th of the month** or earlier, so that your application can be processed in a timely manner. All licensing requirements must be fully satisfied in order to complete your application. You will then be notified of the next monthly Utah Alcoholic Beverage Control Commission meeting when your application will be considered for issuance of a license.

- 1.____ Completed application form (enclosed).
- 2.____ Ownership entity organizational papers for business:
 - a) if a corporation, submit a copy of articles of incorporation;
 - b) if a partnership, submit a copy of written agreement;
 - c) if a limited liability company, submit a copy of articles of organization.
- 3.____ Criminal history background check information (see application form).
- 4.____ Evidence of proximity to schools, churches, libraries, playgrounds and/or parks (see #17 on application form).
- 5.____ Copy of current local business license.
- 6.____ Copy of local beer license. If not required by local authority, obtain written consent from either city/town council or county commission whichever is applicable to sell beer for on premise consumption (form enclosed).
- 7.____ **\$2,000** cash or corporate surety bond (form enclosed).
- 8.____ **Certificate** of insurance for public liability and liquor liability “dram shop” coverage (minimum coverage is \$500,000 per occurrence and \$1,000,000 in the aggregate.)
- 9.____ Scaled floor plan (8-1/2" x 11") of your retail beer facility, highlighting areas for storage, sale and consumption of beer.
- 10.____ **\$250** application fee (non-refundable).
- 11.____ **\$150** initial license fee for period ending last day of February (make checks payable to UDABC)
- 12.____ Food and Beer menu.

Enclosed are copies of Utah law and rules of the commission pertaining to on-premise beer licensees, and a list of factors considered in the evaluation of license applications. If you have questions concerning these forms or the application process, please contact our Licensing and Compliance Division at (801) 977-6800.

UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
APPLICATION FOR
“NON-TAVERN”
ON-PREMISE BEER LICENSE

[] Bowling [] Golf [] Other

1. Business name: _____
2. Applicant/owner of business: _____
3. Location: _____

Street
City
State
Zip
4. Mailing address: _____

Street
P.O. Box
City
State
Zip
5. Business phone: _____ Other phone: _____ Fax: _____
6. Manager: _____ DOB: _____ SS#: _____ DL#: _____
7. Contact person: _____
8. Owner of real property & building: _____
9. List name of previous business at this location: _____
10. List other alcoholic beverage licenses previously and/or currently held by applicant/principals:

11. Date opened for business: _____ (or projection): _____
12. Days and hours of operation: _____
13. Total seating capacity: _____ Number of parking stalls: _____
14. Square footage of facility: _____
- 15a. Average/projected monthly food & beverage sales: _____
- 15b. Projected monthly alcohol sales: _____
16. Describe type of entertainment, if any: _____
17. List any private or public schools, churches, public libraries, public playgrounds or parks located within 600' of your premises. See Utah Code Sections 32A-10-201(3)(4)(5) as to how proximity is determined and measured and for an explanation on variances.

Property	Address	Measured Distance
_____	_____	_____
_____	_____	_____

18. Ownership: Check appropriate box and provide the requested information in the spaces below.

(add additional sheets if necessary)

- [] Applicant is an **individual:** List below information for: (a) Individual
(b) All Managers
- [] Applicant is a **partnership:** List below information for: (a) All Partners
(b) All Managers
- [] Applicant is a **corporation:** List below information for: (a) Any Stockholders owning at least 20% of the corporation
(b) All Corporate officers and Directors
(c) All Managers
- [] Applicant is a **limited liability company (LLC):**
List below information for: (a) Any members owning a least 20% of the company
(b) All Managers

TITLE _____ NAME _____ HOME ADDRESS _____
HOME PHONE# _____ DR LIC# _____ SS# _____ DOB _____ % OWNED _____

Are you a United States Citizen? _____ If no, must attach a copy of residency status.

TITLE _____ NAME _____ HOME ADDRESS _____
HOME PHONE # _____ DR LIC # _____ SS # _____ DOB _____ % OWNED _____

Are you a United States Citizen? _____ If no, must attach a copy of residency status.

TITLE _____ NAME _____ HOME ADDRESS _____
HOME PHONE # _____ DR LIC # _____ SS # _____ DOB _____ % OWNED _____

Are you a United States Citizen? _____ If no, must attach a copy of residency status.

19. Criminal Convictions. The law prohibits any person who has been convicted of a felony under any federal or state law or any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages from being in the alcoholic beverage business. The law also prohibits any person who has been convicted of any crime involving moral turpitude or, on two or more occasions within the last five years, has been convicted of driving under the influence of alcohol, any drug, or the combination of alcohol and any drug from being in the alcoholic beverage business. This proscription also applies to any officers, partners, managers, managing agents, directors, stockholders who hold at least 20% of the total issued and outstanding stock of an applicant corporation, members who own at least 20% of an applicant limited liability company and to any person employed to act in a supervisory or managerial capacity.

Please list *all* criminal offenses *other than minor traffic offenses* of which you or any of the above persons have ever been convicted:

NAME	CRIMINAL OFFENSE	DATE OF CONVICTION
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In addition, a criminal history background check must be furnished on each person listed above and in subparagraph 18. This may be done as follows:

a. Utah residents: If any person listed has been a **resident of Utah for at least two years**, he/she shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the Utah Bureau of Criminal Identification.

b. Non Residents: Out of state residents or persons who have resided in Utah for less than two years shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the **Federal Bureau of Investigation (F.B.I.)**.

Fingerprint cards are available at law enforcement agencies. You may download the fingerprint card at this web address: <http://www.fbi.gov/hq/cjisd/pdf/fpcardb.pdf>

Submit the form(s) to the DABC with a processing fee of:

- \$15.00 per card for BCI background checks, or
- \$34.25 per card for FBI background checks.

In the case of an undue delay in the processing of an F.B.I. criminal background check, here are the rules and procedures for obtaining a third-party national background check: An application that requires F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

- 1). the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the F.B.I. criminal history background report(s);
- 2). the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in the application that would disqualify the applicant from applying for and holding the license, permit, or package agency;
- 3). the applicant has submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s) by the F.B.I.
- 4). the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which an F.B.I. background check is required; and
- 5). the applicant stipulates in writing that if an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

A suggested attestation/stipulation letter that satisfies the above requirements is enclosed.

A third-party national criminal background check can be obtained by;

- searching the yellow pages under Background Screening
- searching the internet under Background Screening or Background Checks

Because the DABC is State Agency, we cannot recommend any one background screening service over another. It is your responsibility however, to obtain the most complete, nationwide, criminal history available for the application process.

- 20.** Applicant agrees to immediately notify the department of any change in ownership, management, and if a corporation, any change in the officers/directors, and understands that failure to do so may result in immediate suspension of license.
- 21.** Have you as an applicant, or any proprietor, partner, managing agent, director, officer, stockholder owning at least 20% corporation stock, or if a limited liability company, any member owning at least 20% of the company, had a state alcoholic beverage license, permit, or agency revoked within the last three years? _____ If so please explain.
-
-

22. By signing below, the applicant attests that:
a) the applicant is in compliance with all federal and state laws pertaining to the payment of taxes and contributions to unemployment and insurance funds. The following are tax identification numbers of the business.

i. State Sales Tax #: _____
ii. State Payroll Withholding Tax #: _____
iii. State Dept. of Workforce Services #: _____
iv. Federal Taxpayer Identification #: _____

b) the proprietor/applicant is at least 21 years of age.

c) consent is granted to representatives of the Alcoholic Beverage Control Department, Commission, State Bureau of Investigation (Bureau of Alcoholic Beverage Law Enforcement), and other law enforcement agencies to be admitted immediately and permitted without hindrance or delay to inspect the entire premises and all records of the licensee.

d) he/she has read and will abide by the provisions of Title 32A, Utah Code, and all rules of the commission and directives of the Department of Alcoholic Beverage Control; and understands that failure to adhere thereto or to no longer possess the qualifications of a licensee may result in suspension or revocation of the license and forfeiture of compliance bond.

e) the applicant does not and will not discriminate against persons on the basis of race, color, sex, religion, ancestry, or national origin.

23. The undersigned acknowledges that he/she has read and understands the statements made herein, and that execution hereof is done voluntarily and by authorization of the applicant/organization, and that any false statement made on this application or any related document is a second degree felony.

24. The undersigned hereby makes application to the Utah Alcoholic Beverage Control Commission for a non-tavern on-premise beer license and certifies that the information contained herein and attached hereto is true and correct.

Dated this _____ day of _____, _____

Applicant/owner of business

Authorized signature

Name/title

STATE OF _____

COUNTY OF _____

Subscribed & sworn to before me this _____

day of _____, _____.

Notary Public

SEAL:

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“ON-PREMISE (Non-Tavern) BEER LICENSE”

LOCAL CONSENT

Date: _____

Attn: DABC Licensing & Compliance Section

_____, ☐ City ☐ Town ☐ County

hereby grants its consent to the issuance of an on-premise beer (non-tavern) retailer license to:

Business Name: _____

Applicant / Business Owner: _____

Location Address: _____

Pursuant to the provisions of Utah Code 32A-10, Part 2, this license allows for the storage, sale and consumption of beer on the premises. Furthermore, the applicant has met all ordinances and requirements relating to issuance of local business license(s).

☐ *Check if applicable*

LOCAL CONSENT FOR PROXIMITY VARIANCE

In accordance with Utah Code 32A-10-201(3), the local authority also grants consent to a variance regarding the proximity of this establishment relative to a public or private school, church, public library, public playground, or park.

Authorized Signature

Print Name / Title

**UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
ON-PREMISE NON-TAVERN BEER LICENSE APPLICATION**

EVALUATION FACTORS

The Alcoholic Beverage Control Department and Commission utilize factors for evaluating an on-premise beer (non-tavern) license application including, but not limited to:

1. Location factors such as:
 - proximity to and density of other alcoholic beverage outlets in the area,
 - traffic flow,
 - demographics,
 - population to be served,
 - proximity to any educational, religious and recreational facilities such as public schools, nursery schools, infant day care centers, trade and technical schools, churches, public libraries, public playgrounds, and parks.
2. Physical characteristics such as:
 - condition of the premises,
 - square footage,
 - seating capacity,
 - parking availability.
3. Management experience:
 - familiarity with alcoholic beverage operations,
 - familiarity with financial record keeping,
 - management scheme employed by the beer retailer,
 - length of time in operation,
 - past compliance with alcoholic beverage laws and rules.
4. Nature or type of beer retailer operation.
 - golf course
 - bowling alley
 - performance hall
 - other
5. Public input.

Note: Keep this sheet and refer to it for presentation before the ABC Commission.

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“ON-PREMISE BEER BOND”

BOND# _____

KNOW ALL PERSONS BY THESE PRESENTS:

That **Principal**, _____, an on-premise beer licensee, doing business as _____, and **Surety**, _____, a corporation organized and existing under the laws of the state of _____ and authorized to do business in Utah, are held and bound unto the Utah Department of Alcoholic Beverage Control in the sum of **\$2,000**, for which payment will be made, we hereby bind ourselves and our representatives, assigns, and successors firmly by these presents.

Dated this _____ day of _____, _____.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above principal has made application to the Utah Alcoholic Beverage Control Commission for an on-premise beer license pursuant to the provisions of 32A-10, Part 2, Utah Code.

NOW, THEREFORE, if said principal, its officers, agents and employees shall faithfully comply with the provisions of Title 32A, Utah Code, and the rules and directives of the Utah Alcoholic Beverage Control Commission and the Utah Department of Alcoholic Beverage Control, then this bond shall be void; but, if said principal, its officers, agents and employees fail to comply with the provisions of the laws, rules and directives or orders as the commission or department may issue, then this bond shall be in full force and effect and payable to the Utah Department of Alcoholic Beverage Control. This bond shall run for a continuing term effective _____ unless canceled by service of written notice upon the Utah Department of Alcoholic Beverage Control, which cancellation shall be effective 30 days after receipt of such notice; provided however, that no part of this bond shall be withdrawn or canceled while violations, legal actions or proceedings are pending against said licensee / principal.

Surety

Attorney in fact

{ Corporate Seal }

Principal / Licensee

Authorized signature

Name / Title

STATUTORY AFFIDAVIT FOR CORPORATE SURETY

STATE OF: _____

COUNTY OF: _____

On the _____ day of _____, _____, personally appeared before me, _____, who, being by me duly sworn, did say that he / she is the attorney in fact of _____, **Surety**, and that said instrument was signed in behalf of said surety by authority, and acknowledged to me that he / she as such attorney in fact executed the same.

Notary Public Signature & Seal

Note: *Corporate surety's own affidavit also acceptable*

(suggested attestation/stipulation letter to the DABC)

Date: _____

To whom it may concern:

I, _____, attest:

- 1. That I have submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s) by the F.B.I.**
- 2. That I am not aware of any criminal conviction that would disqualify me from applying for and holding a Utah Department of Alcoholic Beverage Control license or permit.**

I stipulate that if an F.B.I. report shows a criminal conviction that would disqualify me from holding the license, permit, or package agency, I shall immediately surrender the license, permit, or package agency to the department.

I am enclosing a national criminal history background report from a third party background check reporting service.

Signature

Name/Title

INFORMED CONSENT AND RELEASE OF LIABILITY

PURPOSE: To determine, in accordance with Utah Code 32A-1-702 and 32A-1-703, if an applicant with the Department of Alcoholic Beverage Control has been:

- convicted of a felony under federal or state law;
- convicted of a violation of a federal law, state law, or local ordinance concerning the sale, manufacture, distribution, warehousing, or transportation of an alcoholic beverage;
- convicted of a crime involving moral turpitude;
- convicted on two or more occasions within the previous five years, driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug.

RELEASE

I hereby authorize the Department of Alcoholic Beverage Control (DABC) to investigate my criminal history records to ascertain any and all information which may be pertinent to my qualifications as an applicant with the DABC. The release of any and all information is authorized whether it is of record or not, and I do hereby release all persons, firms, agencies, companies, groups or installations, whomsoever, from any damages of or resulting from, furnishing such information to the DABC. I further agree that a copy of this release will remain in my application file.

Name (please print)

Company

Signature

Date

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P.O. Box 30408 • Salt Lake City, UT 84130-0408 • Ph: 801-977-6800 • Fax: 801-977-6889
website: www.abc.utah.gov

On-Premise Beer License Summary (for retailers that are not taverns)

*Note: This is general information only and should not be considered conclusive.
For further detail, please consult Title 32A of the Utah Code and the Rules of the Commission.*

A state on-premise beer retailer license allows the sale of beer at retail for on-premise consumption. These establishments include restaurants, cafes, bowling center or golf course food and beverage facilities, snack bars, etc. Special licensing conditions apply to on-premise beer retailers who are *taverns* (see separate Tavern License Summary). Liquor may not be stored or sold on the premises of an on-premise beer retailer. Effective October 1, 2008, flavored malt beverages may not be stored or sold on the premises of an on-premise beer retailer.

Licenses run from March 1 to the last day of February. For on-premise beer retailers that are *not* taverns, there is no quota and the commission may issue licenses at places and in numbers it considers proper. Only one state beer license is required for each building or resort facility owned or leased by the same applicant. The state license is in addition to any beer license required by a local government.

Purchases of Beer

- The on-premise retailer must purchase, acquire, possess for resale, or sell beer that has been lawfully purchased from a Utah wholesaler who is authorized to sell beer in the geographical area in which the beer retailer is located, or from a small brewer (manufactures less than 60,000 barrels per year).

Sale and Service of Beer

- Beer may be sold and served in open containers in any size not exceeding 2 liters and on draft. Beer may be sold by the pitcher (up to two liters) to two or more patrons, but may be sold to an individual patron only in a container that does not exceed one liter.
- Beer sold in sealed containers may be removed from the beer retailer's premise.

Sales Hours

- Beer may be sold from 10 a.m. until 1 a.m.

Discounting Practices Prohibited

- Discounting practices are prohibited that encourage over-consumption of beer (i.e. reduced prices for certain hours of the day, "happy hours", "two for ones", "all you can drink for a set price", free beer, or selling at less than cost).

Consumption on the Premises

- An open container primarily used for drinking purposes and containing beer may not be removed from the premises.

Minors

- Minors may be employed by an on-premise beer retailer, but may not sell, dispense, or furnish beer.
- Minors may work at a cash register to ring up the sale of beer.

Employees

- Any employee who sells, serves, dispenses, or handles beer must be twenty one years of age or older.
- Employees may not consume or be under the influence of alcoholic beverages while on duty.
- Servers of alcohol must wear a unique identification badge showing the employee's first name, initials, or a number assigned by the employer.
- Managers, supervisors, and employees who serve alcohol must take and pass an alcohol server training seminar every three years and must complete the training within 30 days of commencing employment.

Employee Fines

- The commission is authorized to assess an administrative fine against an officer, employee, or agent of a licensee for a violation of the alcoholic beverage laws.

“Brown Bagging”

- Patrons may not bring in or store alcoholic beverages on the premises.

Advertising

- Beer advertising must comply with the guidelines in Rule R81-1-17.

Warning sign

- Each on-premise beer retailer licensee shall display, in a prominent place, a sign in at least half inch bold letters stating: “Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah.”

Prohibited Conduct

- Lewd acts, attire, and sexually oriented conduct of employees and entertainers that are considered contrary to public welfare and morals are prohibited on the premises.

Gambling

- An on-premise beer retailer may not engage in or permit any form of gambling on the premises.

TITLE 32A- ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through May 2007)

Chapter 10 - Beer Retailer Licenses

PART 2

ON-PREMISE BEER RETAILER LICENSES

32A-10-201. Commission's power to grant licenses -- Limitations.

- (1) Before an establishment may sell beer at retail for on-premise consumption, it shall first obtain:
- (a) an on-premise beer retailer license from the commission as provided in this part; and
 - (b) (i) a license issued by the local authority, as provided in Section **32A-10-101**, to sell beer at retail for on-premise consumption; or
 - (ii) other written consent of the local authority to sell beer at retail for on-premise consumption.
- (2) (a) Subject to the requirements of this section, the commission may issue on-premise beer retailer licenses for the purpose of establishing on-premise beer retailer outlets at places and in numbers as it considers proper for the storage, sale, and consumption of beer on premises operated as on-premise beer retailer outlets.
- (b) Notwithstanding Subsection (2)(a), the total number of on-premise beer retailer licenses that are taverns may not at any time aggregate more than that number determined by dividing the population of the state by 30,500.
- (c) For purposes of this Subsection (2), the population of the state shall be determined by:
- (i) the most recent United States decennial special census; or
 - (ii) another population determination made by the United States or state governments.
- (d) (i) The commission may issue seasonal licenses for taverns established in areas the commission considers necessary.
- (ii) A seasonal license for taverns shall be for a period of six consecutive months.
 - (iii) An on-premise beer retailer license for a tavern issued for operation during a summer time period is known as a "Seasonal A" on-premise beer retailer license for a tavern. The period of operation for a "Seasonal A" on-premise beer retailer license for a tavern shall:
 - (A) begin on May 1; and
 - (B) end on October 31.
 - (iv) An on-premise beer retailer license for a tavern issued for operation during a winter time period is known as a "Seasonal B" on-premise beer retailer license for a tavern. The period of operation for a "Seasonal B" on-premise beer retailer license for a tavern shall:
 - (A) begin on November 1; and
 - (B) end on April 30.
 - (v) In determining the number of tavern licenses that the commission may issue under this section:
 - (A) a seasonal on-premise beer retailer license for a tavern is counted as 1/2 of one on-premise beer retailer license for a tavern; and
 - (B) each "Seasonal A" on-premise beer retailer license for a tavern shall be paired with a "Seasonal B" on-premise beer retailer license for a tavern.
- (3) (a) Except as provided in Subsection (3)(b), (c), or (d), the premises of an on-premise beer retailer license may not be established:
- (i) within 600 feet of a community location, as measured by the method in Subsection (3)(e); or
 - (ii) within 200 feet of a community location, measured in a straight line from the nearest entrance of the proposed outlet to the nearest property boundary of the community location.
- (b) With respect to the establishment of an on-premise beer retailer license, the commission may authorize a variance to reduce the proximity requirement of Subsection (3)(a)(i) if:
- (i) the local authority grants its written consent to the variance;
 - (ii) the commission finds that alternative locations for establishing an on-premise beer retailer license in the community are limited;
 - (iii) a public hearing is held in the city, town, or county, and where practical, in the neighborhood concerned;
 - (iv) after giving full consideration to all of the attending circumstances and the policies stated in

Subsections **32A-1-104**(3) and (4), the commission determines that establishing the license would not be detrimental to the public health, peace, safety, and welfare of the community; and

(v) (A) the community location governing authority gives its written consent to the variance; or

(B) when written consent is not given by the community location governing authority, the commission finds that the applicant has established that:

(I) there is substantial unmet public demand to consume alcohol in a public setting within the geographic boundary of the local authority in which the on-premise beer retailer licensee is to be located;

(II) there is no reasonably viable alternative for satisfying substantial unmet demand described in Subsection (3)(b)(v)(B)(I) other than through the establishment of an on-premise beer retailer license; and

(III) there is no reasonably viable alternative location within the geographic boundary of the local authority in which the on-premise beer retailer licensee is to be located for establishing an on-premise beer retailer license to satisfy the unmet demand described in Subsection (3)(b)(v)(B)(I).

(c) With respect to the establishment of an on-premise beer retailer license, the commission may authorize a variance that reduces the proximity requirement of Subsection (3)(a)(ii) if:

(i) the community location at issue is:

(A) a public library; or

(B) a public park;

(ii) the local authority grants its written consent to the variance;

(iii) the commission finds that alternative locations for establishing an on-premise beer retailer license in the community are limited;

(iv) a public hearing is held in the city, town, or county, and where practical in the neighborhood concerned;

(v) after giving full consideration to all of the attending circumstances and the policies stated in Subsections **32A-1-104**(3) and (4), the commission determines that establishing the on-premise beer retailer license would not be detrimental to the public health, peace, safety, and welfare of the community; and

(vi) (A) the community location governing authority gives its written consent to the variance; or

(B) when written consent is not given by the community location governing authority, the commission finds that the applicant has established that:

(I) there is substantial unmet public demand to consume alcohol in a public setting within the geographic boundary of the local authority in which the on-premise beer retailer licensee is to be located;

(II) there is no reasonably viable alternative for satisfying substantial unmet demand described in Subsection (3)(c)(vi)(B)(I) other than through the establishment of an on-premise beer retailer license; and

(III) there is no reasonably viable alternative location within the geographic boundary of the local authority in which the on-premise beer retailer licensee is to be located for establishing an on-premise beer retailer license to satisfy the unmet demand described in Subsection (3)(c)(vi)(B)(I).

(d) (i) With respect to an on-premise beer retailer license issued by the commission before July 1, 1991, to an establishment that undergoes a change in ownership after that date, the commission may waive or vary the proximity requirements of this Subsection (3) in considering whether to grant an on-premise retailer beer license to the new owner.

(ii) With respect to the premises of an on-premise beer retailer license issued by the commission that undergoes a change of ownership, the commission may waive or vary the proximity requirements of Subsection (3)(a) in considering whether to grant an on-premise beer retailer license to the new owner of the premises if:

(A) (I) the premises previously received a variance from the proximity requirement of Subsection (3)(a)(i); or

(II) the premises received a variance from the proximity requirement of Subsection (3)(a)(ii) on or before May 4, 2008; or

(B) a variance from proximity requirements was otherwise allowed under this title.

(e) The 600 foot limitation described in Subsection (3)(a)(i) is measured from the nearest entrance of the outlet by following the shortest route of ordinary pedestrian travel to the property boundary of the community location.

(4) (a) Nothing in this section prevents the commission from considering the proximity of any educational, religious, and recreational facility, or any other relevant factor in reaching a decision on a proposed location.

(b) For purposes of this Subsection (4), "educational facility" includes:

- (i) a nursery school;
- (ii) an infant day care center; and
- (iii) a trade and technical school.

32A-10-202. Application and renewal requirements.

(1) A person seeking an on-premise beer retailer license under this chapter shall file a written application with the department, in a form prescribed by the department. The application shall be accompanied by:

- (a) a nonrefundable \$250 application fee;
- (b) an initial license fee that is refundable if a license is not granted in the following amount:
 - (i) if the on-premise beer retailer licensee does not operate as a tavern, the initial license fee is \$150; or
 - (ii) if the on-premise beer retailer licensee operates as a tavern, the initial license fee is \$1,250;
- (c) written consent of the local authority or a license to sell beer at retail for on-premise consumption granted by the local authority under Section **32A-10-101**;
- (d) a copy of the applicant's current business license;
- (e) evidence of proximity to any community location, with proximity requirements being governed by Section **32A-10-201**;
- (f) a bond as specified by Section **32A-10-205**;
- (g) a floor plan of the premises, including consumption areas and the area where the applicant proposes to keep, store, and sell beer;
- (h) evidence that the on-premise beer retailer licensee is carrying public liability insurance in an amount and form satisfactory to the department;
- (i) for a licensee that sells more than \$5,000 of beer annually, evidence that the on-premise beer retailer licensee is carrying dramshop insurance coverage of at least \$500,000 per occurrence and \$1,000,000 in the aggregate;
- (j) a signed consent form stating that the on-premise beer retailer licensee will permit any authorized representative of the commission, department, or any peace officer unrestricted right to enter the licensee premises;
- (k) in the case of an applicant that is a partnership, corporation, or limited liability company, proper verification evidencing that the person or persons signing the on-premise beer retailer licensee application are authorized to so act on the behalf of the partnership, corporation, or limited liability company; and
- (l) any other information the department may require.

(2) (a) All on-premise beer retailer licenses expire on the last day of February of each year.

(b) (i) Except as provided in Subsection (2)(b)(ii), a person desiring to renew the person's on-premise beer retailer license shall submit by no later than January 31:

- (A) a completed renewal application to the department; and
- (B) a renewal fee in the following amount:

- (I) if the on-premise beer retailer licensee does not operate as a tavern, the renewal fee is \$200; or
- (II) if the on-premise beer retailer licensee operates as a tavern, the renewal fee is \$1,000.

(ii) A licensee is not required to submit a renewal fee if the licensee is:

- (A) a state agency; or
- (B) a political subdivision of the state including:
 - (I) a county; or

(II) a municipality.

(c) Failure to meet the renewal requirements shall result in an automatic forfeiture of the license, effective on the date the existing license expires.

(d) A renewal statement shall be in a form as prescribed by the department.

(3) To ensure compliance with Subsection **32A-10-206**(17), the commission may suspend or revoke a beer retailer license if a beer retailer licensee does not immediately notify the department of any change in:

- (a) ownership of the beer retailer;
- (b) for a corporate owner, the:
 - (i) corporate officers or directors; and
 - (ii) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or
- (c) for a limited liability company:

- (i) managers; or
 - (ii) members owning at least 20% of the limited liability company.
- (4) An applicant need not meet the requirements of Subsections (1)(a), (b), (c), (d), and (f) if the applicant is:
- (a) a state agency; or
 - (b) a political subdivision of the state including:
 - (i) a county; or
 - (ii) a municipality.
- (5) (a) Except as provided in Subsection (5)(c), only one state on-premise beer retailer license is required for each building or resort facility owned or leased by the same applicant.
- (b) Except as provided in Subsection (5)(c), separate licenses are not required for each retail beer dispensing outlet located in the same building or on the same resort premises owned or operated by the same applicant.
- (c) (i) Subsections (5)(a) and (5)(b) apply only if all of the retail beer dispensing outlets in the building or resort facility operate in the same manner.
- (ii) If the condition described in Subsection (5)(c)(i) is not met:
- (A) one state on-premise beer retailer tavern license is required for all outlets in the same building or on the same resort premises that operate as a tavern; and
- (B) one state on-premise beer retailer license is required for all outlets in the same building or on the same resort premises that do not operate as a tavern.

32A-10-203. Qualifications.

- (1) (a) The commission may not grant an on-premise beer retailer license to any person who has been convicted of:
- (i) a felony under any federal or state law;
 - (ii) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;
 - (iii) of any crime involving moral turpitude; or
 - (iv) on two or more occasions within the five years before the day on which the license is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug.
- (b) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1)(a) applies if any of the following has been convicted of any offense described in Subsection (1)(a):
- (i) a partner;
 - (ii) a managing agent;
 - (iii) a manager;
 - (iv) an officer;
 - (v) a director;
 - (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or
 - (vii) a manager or member who owns at least 20% of the applicant limited liability company.
- (c) The proscription under Subsection (1)(a) applies if any person employed to act in a supervisory or managerial capacity for the on-premise beer retailer has been convicted of any offense described in Subsection (1)(a).
- (2) The commission may immediately suspend or revoke an on-premise beer retailer license if after the day on which the on-premise beer retailer license is granted, a person described in Subsection (1)(a), (b), or (c):
- (a) is found to have been convicted of any offense described in Subsection (1)(a) prior to the license being granted; or
 - (b) on or after the day on which the license is granted:
 - (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or
 - (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug; and
 - (B) was convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug within five years before the day on which the person is convicted of the offense

described in Subsection (2)(b)(ii)(A).

(3) The director may take emergency action by immediately suspending the operation of an on-premise beer retailer license according to the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, for the period during which the criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):

(a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii); or

(b) (i) is arrested on a charge for the offense of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug; and

(ii) was convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).

(4) (a) (i) The commission may not grant an on-premise beer retailer license to any person who has had any type of license, agency, or permit issued under this title revoked within the last three years.

(ii) The commission may not grant an on-premise beer retailer license to any applicant that is a partnership, corporation, or limited liability company if any partner, managing agent, manager, officer, director, stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation, or member who owns at least 20% of the applicant limited liability company is or was:

(A) a partner or managing agent of any partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;

(B) a managing agent, officer, director, or stockholder who holds or held at least 20% of the total issued and outstanding stock of any corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or

(C) a manager or member who owns or owned at least 20% of any limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.

(b) An applicant that is a partnership, corporation, or limited liability company may not be granted an on-premise beer retailer license if any of the following had any type of license, agency, or permit issued under this title revoked while acting in that person's individual capacity within the last three years:

(i) any partner or managing agent of the applicant partnership;

(ii) any managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(iii) any manager or member company who owns at least 20% of the applicant limited liability company.

(c) A person acting in an individual capacity may not be granted an on-premise beer retailer license if that person was:

(i) a partner or managing agent of a partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;

(ii) a managing agent, officer, director, or stockholder who held at least 20% of the total issued and outstanding stock of a corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or

(iii) a manager or member of any limited liability company who owned at least 20% of a limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.

(5) (a) A minor may not be granted an on-premise beer retailer license.

(b) The commission may not grant a on-premise beer retailer license to an applicant that is a partnership, corporation, or limited liability company if any of the following is a minor:

(i) a partner or managing agent of the applicant partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(iii) a manager or member who owns at least 20% of the applicant limited liability company. (6) If any person to whom a license has been issued under this part no longer possesses the qualifications required by this title for obtaining that license, the commission may suspend or revoke that license.

32A-10-204. Commission and department duties before granting licenses.

(1) (a) Before an on-premise beer retailer license may be granted by the commission the department shall conduct an investigation and may hold public hearings for the purpose of gathering information and making recommendations to the commission as to whether or not a license should be granted.

(b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.

(2) Before issuing an on-premise beer retailer license, the commission shall:

(a) determine that:

(i) the applicant has complied with all basic qualifications and requirements for making application for a license as provided by Sections **32A-10-202** and **32A-10-203**; and

(ii) the application is complete;

(b) consider the locality within which the proposed on-premise beer retailer outlet is located including:

(i) physical characteristics such as:

(A) the condition of the premises;

(B) square footage; and

(C) parking availability; and

(ii) operational factors such as:

(A) tourist traffic;

(B) proximity to and density of other state stores, package agencies, and licensed outlets;

(C) demographics;

(D) population served; and

(E) the extent of and proximity to any community location;

(c) consider the applicant's ability to manage and operate an on-premise beer retailer license including:

(i) management experience;

(ii) past beer retailer experience; and

(iii) the type of management scheme employed by the outlet;

(d) consider the nature or type of beer retailer operation of the proposed licensee; and

(e) consider any other factors or circumstances the commission considers necessary.

32A-10-205. BOND.

(1) Each on-premise beer retailer licensee shall post a cash or corporate surety bond in the penal sum of \$2,000 payable to the department, which the licensee has procured and must maintain for so long as the licensee continues to operate as an on-premise beer retailer licensee.

(2) The bond shall be in a form approved by the attorney general, conditioned upon the licensee's faithful compliance with this title and the rules of the commission.

(3)(a) If the \$2,000 surety bond is canceled due to the licensee's negligence, a \$300 reinstatement fee may be assessed.

(b) No part of any cash or corporate bond so posted may be withdrawn during the period the license is in effect, or while revocation proceedings are pending against the licensee.

(c) A bond filed by a licensee may be forfeited if the license is finally revoked.

32A-10-206. Operational restrictions.

A person granted an on-premise beer retailer license and the employees and management personnel of the on-premise beer retailer licensee shall comply with the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) (a) Subject to Subsection (1)(b), a beer retailer licensee may sell beer for on-premise consumption:

(i) in an open container; and

(ii) on draft.

(b) Beer sold pursuant to Subsection (1)(a) shall be in a size of container that does not exceed two liters, except that beer may not be sold to an individual patron in a size of container that exceeds one liter.

(2) Liquor may not be stored or sold on the premises of any on-premise beer retailer licensee.

(3) A patron of the on-premise beer retailer may only make a purchase from and be served by a person employed, designated, and trained by the licensee to sell and serve beer.

(4) (a) Beer may not be sold, offered for sale, served, or otherwise furnished at an on-premise beer retailer establishment after 1 a.m. and before 10 a.m.

(b) Beer may not be sold, served, or otherwise furnished to a:

(i) minor;

(ii) person actually, apparently, or obviously intoxicated;

- (iii) known habitual drunkard; or
- (iv) known interdicted person.
- (c) (i) Notwithstanding Subsection (4)(a), a tavern licensed under this chapter shall remain open for one hour after the tavern ceases the sale and service of alcoholic beverages during which time a patron of the tavern may finish consuming a single serving of beer not exceeding 26 ounces.
- (ii) A tavern is not required to remain open:
 - (A) after all patrons have vacated the premises; or
 - (B) during an emergency.
- (d) Between the hours of 2 a.m. and 10 a.m. on any day a tavern may not allow a patron to remain on the premises to consume alcoholic beverages on the premises.
- (5) (a) Beer may not be sold at less than the cost of the beer to the licensee.
- (b) Beer may not be sold at a special or reduced price that encourages over consumption or intoxication.
- (c) Beer may not be sold at a special or reduced price for only certain hours of the beer retailer's business day such as a "happy hour."
- (d) More than one alcoholic beverage may not be sold or served for the price of a single alcoholic beverage.
- (e) An indefinite or unlimited number of alcoholic beverages may not be sold or served during a set period for a fixed price.
- (f) An on-premise beer licensee may not engage in a public promotion involving or offering free alcoholic beverages to the general public.
- (6) Beer may not be purchased for a patron of the on-premise beer establishment by:
 - (a) the on-premise beer licensee; or
 - (b) an employee or agent of the on-premise beer licensee.
- (7) Beer sold in a sealed container by the on-premise beer retailer licensee may be removed from the on-premise beer retailer premises.
- (8) (a) A person may not bring onto the premises of an on-premise beer retailer licensee an alcoholic beverage for on-premise consumption.
- (b) An on-premise beer retailer licensee or an officer, manager, employee, or agent of the licensee may not:
 - (i) allow a person to bring onto the on-premise beer retailer licensee premises an alcoholic beverage for on-premise consumption; or
 - (ii) allow consumption of an alcoholic beverage described in this Subsection (8) on its premises.
- (9) An on-premise beer retailer licensee and an employee or the licensee may not permit a patron to carry from the premises an open container that:
 - (a) is used primarily for drinking purposes; and
 - (b) contains an alcoholic beverage.
- (10) (a) Except as provided in Subsection (10)(b), a minor may not be:
 - (i) employed by or be on the premises of an on-premise beer retailer licensee to sell, dispense, or otherwise furnish beer; or
 - (ii) on the premises of a tavern.
- (b) Notwithstanding Subsection (10)(a), a minor who is at least 16 years of age may be employed to enter the sale at a cash register or other sales recording device on the premises of an on-premise beer retailer that is not a tavern.
- (11) An employee of a licensee, while on duty, may not:
 - (a) consume an alcoholic beverage; or
 - (b) be intoxicated.
- (12) An on-premise beer retailer licensee shall display in a prominent place in the on-premise beer retailer licensee:
 - (a) the on-premise beer retailer license that is issued by the department; and
 - (b) a sign in large letters stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."
- (13) An on-premise beer retailer licensee may not on the premises of the on-premise beer retailer licensee:
 - (a) engage in or permit any form of gambling, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling;

(b) have any video gaming device, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling; or

(c) engage in or permit a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.

(14) (a) Each on-premise beer retailer licensee shall maintain accounting and other records and documents as the department may require.

(b) Any on-premise beer retailer licensee or person acting for the on-premise beer retailer licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes an entry in a book of account or other document of the on-premise beer retailer licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, the department, or any of their officials or employees, is subject to:

(i) the immediate suspension or revocation of the on-premise beer retailer license; and

(ii) possible criminal prosecution under Chapter 12, Criminal Offenses.

(15) (a) A tavern licensed under this chapter may not close or cease operation for a period longer than 240 hours, unless:

(i) the tavern licensee notifies the department in writing at least seven days before the closing; and

(ii) the closure or cessation of operation is first approved by the department.

(b) Notwithstanding Subsection (15)(a), in the case of emergency, a tavern licensee shall immediately notify the department by telephone.

(c) (i) The department may authorize a closure or cessation of operation for a period not to exceed 60 days.

(ii) The department may extend the initial period an additional 30 days upon:

(A) written request of the tavern licensee; and

(B) a showing of good cause.

(iii) A closure or cessation of operation may not exceed a total of 90 days without commission approval.

(d) A notice of closure or cessation by a tavern licensee shall include:

(i) the date of closure or cessation of operation;

(ii) the reason for the closure or cessation of operation; and

(iii) the dates on which the tavern licensee will reopen or resume operation.

(e) Failure of the tavern licensee to provide notice and to obtain department authorization before closure or cessation of operation results effective immediately in an automatic forfeiture of:

(i) the license; and

(ii) the unused portion of the license fee for the remainder of the license year.

(f) Failure of the tavern licensee to reopen or resume operation by the approved date results in an automatic forfeiture of:

(i) the license; and

(ii) the unused portion of the license fee for the remainder of the license year.

(16) An on-premise beer retailer license may not be transferred from one location to another, without prior written approval of the commission.

(17) (a) An on-premise beer retailer licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to any person, whether for monetary gain or not.

(b) An on-premise beer retailer license has no monetary value for the purpose of any type of disposition.

(18) An on-premise beer retailer or an employee of the on-premise beer retailer may not knowingly allow a person on the licensed premises to, in violation of Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug Paraphernalia Act:

(a) sell, distribute, possess, or use a controlled substance, as defined in Section **58-37-2**; or

(b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in Section **58-37a-3**.

TITLE 32A - ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through May 2007)

PART 6

ATTIRE, CONDUCT, AND ENTERTAINMENT ACT

32A-1-601. TITLE -- PURPOSE -- APPLICATION TO OTHER LAWS.

- (1) This part is known as the "Attire, Conduct, and Entertainment Act."
- (2) This part establishes reasonable and uniform time, place, and manner of operation restrictions relating to attire, conduct, and sexually oriented entertainers on a premises or at an event at which alcoholic beverages are sold, served, or allowed to be consumed under a retail license or permit issued by the commission so as to:
 - (a) reduce the adverse secondary effects that the attire, conduct, and sexually oriented entertainers may have upon communities of this state; and
 - (b) protect the health, peace, safety, welfare, and morals of the residents of communities of this state.
- (3) Nothing in this part permits or allows the showing or display of any matter that is contrary to:
 - (a) applicable federal or state statutes prohibiting obscenity; or
 - (b) state statutes relating to lewdness or indecent public displays.
- (4) A local authority may be more restrictive of attire, conduct, or sexually oriented entertainers of the type prohibited in this part.

32A-1-602. GENERAL RESTRICTIONS ON ATTIRE AND CONDUCT.

The following attire and conduct on a premises or at an event regulated by the commission under this title are considered contrary to the public health, peace, safety, welfare, and morals, and are prohibited:

- (1) employing or using a person in the sale or service of alcoholic beverages while the person is in:
 - (a) a state of nudity;
 - (b) a state of seminudity; or
 - (c) attire, costume, or clothing that exposes to view any portion of:
 - (i) the female breast below the top of the areola; or
 - (ii) the cleft of the buttocks;
- (2) employing or using the services of a person to mingle with patrons while the person is in:
 - (a) a state of nudity;
 - (b) a state of seminudity; or
 - (c) attire, costume, or clothing that exposes to view any portion of:
 - (i) the female breast below the top of the areola; or
 - (ii) the cleft of the buttocks;
- (3) encouraging or permitting a person to:
 - (a) engage in or simulate an act of:
 - (i) sexual intercourse;
 - (ii) masturbation;
 - (iii) sodomy;
 - (iv) bestiality;
 - (v) oral copulation;
 - (vi) flagellation; or
 - (vii) a sexual act that is prohibited by Utah law; or
 - (b) touch, caress, or fondle the breast, buttocks, anus, or genitals of any other person;
- (4) permitting a person to wear or use a device or covering that:
 - (a) is exposed to view; and
 - (b) simulates all or any portion of the human genitals, anus, pubic area, or female breast;
- (5) permitting a person to use an artificial device or inanimate object to depict an act prohibited by

this section;

(6) permitting a person to remain on a premises or at an event who exposes to public view any portion of that person's:

(a) genitals, pubic area, or anus; or

(b) in the case of a female, the areola and nipple of the breast; or

(7) showing a film, still picture, electronic reproduction, or other visual reproduction depicting:

(a) an act or simulated act of:

(i) sexual intercourse;

(ii) masturbation;

(iii) sodomy;

(iv) bestiality;

(v) oral copulation;

(vi) flagellation; or

(vii) a sexual act that is prohibited by Utah law;

(b) a person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;

(c) a scene wherein an artificial device or inanimate object is employed to depict, or a drawing is employed to portray, an act prohibited by this section; or

(d) a scene wherein a person displays the genitals or anus.

32A-1-603. Sexually oriented entertainer.

(1) Subject to the restrictions of this section, live entertainment is permitted on a premises or at an event regulated by the commission.

(2) Notwithstanding Subsection (1), a licensee or permittee may not permit a person to:

(a) appear or perform in a state of nudity;

(b) perform or simulate an act of:

(i) sexual intercourse;

(ii) masturbation;

(iii) sodomy;

(iv) bestiality;

(v) oral copulation;

(vi) flagellation; or

(v) a sexual act that is prohibited by Utah law; or

(c) touch, caress, or fondle the breast, buttocks, anus, or genitals.

(3) A sexually oriented entertainer may perform in a state of seminudity:

(a) only in a tavern or class D private club; and

(b) only if:

(i) all windows, doors, and other apertures to the premises are darkened or otherwise constructed to prevent anyone outside the premises from seeing the performance; and

(ii) the outside entrance doors of the premises remain unlocked.

(4) A sexually oriented entertainer may perform only upon a stage or in a designated performance area that is:

(a) approved by the commission in accordance with rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) configured so as to preclude a patron from:

(i) touching the sexually oriented entertainer; or

(ii) placing any money or object on or within the costume or the person of the sexually oriented entertainer; and

(c) configured so as to preclude the sexually oriented entertainer from touching a patron.

(5) A sexually oriented entertainer may not touch a patron:

(a) during the sexually oriented entertainer's performance; or

(b) while the sexually oriented entertainer is dressed in performance attire or costume.

(6) A sexually oriented entertainer, while in the portion of the premises used by patrons, must be dressed in opaque clothing which covers and conceals the sexually oriented entertainer's performance attire or costume from the top of the breast to the knee.

(7) A patron may not be on the stage or in the performance area while a sexually oriented entertainer is appearing or performing on the stage or in the performance area.

(8) A patron may not:

(a) touch a sexually oriented entertainer:

(i) during the sexually oriented entertainer's performance; or

(ii) while the sexually oriented entertainer is dressed in performance attire or costume; or

(b) place money or any other object on or within the costume or the person of the sexually oriented entertainer.

(9) A minor may not be on a premises described in Subsection (3) when a sexually oriented entertainer is performing on the premises.

(10) A person who appears or performs for the entertainment of patrons on a premises or at an event regulated by the commission that is not a tavern or class D private club:

(a) may not appear or perform in a state of nudity or a state of seminudity; and

(b) may appear or perform in opaque clothing that completely covers the person's genitals, pubic area, and anus if the covering:

(i) is not less than the following at its widest point:

(A) four inches coverage width in the front of the human body; and

(B) five inches coverage width in the back of the human body;

(ii) does not taper to less than one inch wide at the narrowest point; and

(iii) if covering a female, completely covers the breast below the top of the areola.

32A-1-604. COMPLIANCE -- DISCIPLINARY PROCEEDING.

(1) Each person granted a license or permit by the commission to sell, serve, or allow consumption of alcoholic beverages on a premises or at an event and each officer, employee, or agent of the licensee or permittee shall comply with the conditions and requirements of this part.

(2) Failure to comply with this part may result in a disciplinary proceeding pursuant to Section 32A-1-119 against:

(a) a licensee or permittee; and

(b) an officer, employee, or agent of the licensee or permittee.

R81-1 Alcoholic Beverage Control, Administration.

R81-10A. On-Premise Beer Retailer Licenses.

R81-10A-1. Licensing.

(1) On-premise beer retailer licenses are issued to persons as defined in Section 32A-1-105(38). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32A-10-202(3), 32A-10-203, and 32A-10-206(18).

(2) An on-premise beer retailer licensee that wishes to operate the same licensed premises under the operational restrictions of a restaurant liquor license during certain designated periods of the day or night, must apply for and be issued a separate restaurant liquor license subject to the following:

(a) The same on-premise beer retailer licensee must separately apply for a state restaurant liquor license pursuant to the requirements of Sections 32A-4-102, -103, and -105.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) On-premise beer retailer licensees holding a separate restaurant liquor license must operate in accordance with 32A-4-106 and R81-4A during the hours the restaurant liquor license is active.

(d) Liquor storage areas on the restaurant premises shall be deemed to remain on the floor plan of the restaurant premises and shall be kept locked during the hours the on-premise beer retailer license is active.

R81-10A-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an on-premise beer retailer license when the requirements of Sections 32A-10-202, -203, and -205 have been met, and a completed application has been received by the department and the beer retailer premises have been inspected by the department.

R81-10A-3. Bonds.

No part of any corporate or cash bond required by Section 32A-10-205 may be withdrawn during the time the license is in effect. If the on-premise beer licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-10A-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-10-202(1)(h) and (i) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-10A-5. On-premise Beer Licensee Operating Hours.

Beer sales shall be in accordance with Section 32A-10-206(4). However, on-premise beer licensees may open their beer storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-10A-6. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-10A-7. Draft Beer Sales/Minors on Premises.

A state on-premise beer license, restaurant liquor license, airport lounge license, limited restaurant license, on-premise banquet license or private club license authorizes the licensee to sell beer on draft regardless of the nature of the business (e.g. café, restaurant, pizza parlor, bowling alley, golf course clubhouse, club, tavern, etc.). Minors may not be precluded from establishments based upon whether draft beer is sold. However, minors may not be employed by or be on the premises of any establishment or portion of an establishment which is a "tavern" as defined in Section 32A-1-105(61). This does not preclude local authorities and licensees from excluding minors from premises or portions of premises which have the atmosphere or appearance of a "tavern" as so defined.

TITLE 32A - ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through May 2007)

Chapter 14a - Alcoholic Beverage Liability

32A-14a-101. Definitions.

As used in this chapter:

(1) "Death of a third person" includes recovery for all damages, special and general, resulting from such death, except punitive damages.

(2)(a) "Injury" includes injury in person, property, or means of support.

(b) "Injury" also includes recovery for intangibles such as mental and emotional injuries, loss of affection, and companionship.

32A-14a-102. Liability for injuries and damage resulting from distribution of alcoholic beverages -- Causes of action -- Statute of limitations -- Employee protections.

(1) (a) Except as provided in Section **32A-14a-103**, a person described in Subsection (1)(b) is liable for:

(i) any and all injury and damage, except punitive damages to:

(A) any third person; or

(B) the heir, as defined in Section **78B-3-105**, of that third person; or

(ii) for the death of a third person.

(b) A person is liable under Subsection (1)(a) if:

(i) the person directly gives, sells, or otherwise provides an alcoholic beverage:

(A) to a person described in Subsection (1)(b)(ii); and

(B) as part of the commercial sale, storage, service, manufacture, distribution, or consumption of alcoholic products;

(ii) those actions cause the intoxication of:

(A) any individual under the age of 21 years;

(B) any individual who is apparently under the influence of intoxicating alcoholic products or drugs;

(C) any individual whom the person furnishing the alcoholic beverage knew or should have known from the circumstances was under the influence of intoxicating alcoholic beverages or products or drugs; or

(D) any individual who is a known interdicted person; and

(iii) the injury or death described in Subsection (1)(a) results from the intoxication of the individual who is provided the alcoholic beverage.

(2) (a) A person 21 years of age or older who is described in Subsection (2)(b) is liable for:

(i) any and all injury and damage, except punitive damages to:

(A) any third person; or

(B) the heir, as defined in Section **78B-3-105**, of that third person; or

(ii) for the death of the third person.

(b) A person is liable under Subsection (2)(a) if:

(i) that person directly gives or otherwise provides an alcoholic beverage to an individual who the person knows or should have known is under the age of 21 years;

(ii) those actions caused the intoxication of the individual provided the alcoholic beverage;

(iii) the injury or death described in Subsection (2)(a) results from the intoxication of the individual who is provided the alcoholic beverage; and

(iv) the person is not liable under Subsection (1), because the person did not directly give or provide the alcoholic beverage as part of the commercial sale, storage, service, manufacture, distribution, or consumption of alcoholic products.

(3) Except for a violation of Subsection (2), an employer is liable for the actions of its employees in violation of this chapter.

(4) A person who suffers an injury under Subsection (1) or (2) has a cause of action against the person who provided the alcoholic beverage in violation of Subsection (1) or (2).

(5) If a person having rights or liabilities under this chapter dies, the rights or liabilities provided by this chapter survive to or against that person's estate.

(6) The total amount that may be awarded to any person pursuant to a cause of action for injury and damage under this chapter that arises after January 1, 1998, is limited to \$500,000 and the aggregate amount which may be awarded to all persons injured as a result of one occurrence is limited to \$1,000,000.

(7) An action based upon a cause of action under this chapter shall be commenced within two years after the date of the injury and damage.

(8) (a) Nothing in this chapter precludes any cause of action or additional recovery against the person causing the injury.

(b) Any cause of action or additional recovery against the person causing the injury and damage, which action is not brought under this chapter, is exempt from the damage cap in Subsection (6).

(c) Any cause of action brought under this chapter is exempt from Sections **78B-5-817** through **78B-5-823**.

(9) This section does not apply to a business licensed under Chapter 10, Part 1, General Provisions, to sell beer at retail only for off-premise consumption.

32A-14a-103. Employee protected in exercising judgment.

(1) An employer may not sanction or terminate the employment of an employee of a restaurant, airport lounge, private club, on-premise beer retailer, or any other establishment serving alcoholic beverages as a result of the employee having exercised the employee's independent judgment to refuse to sell alcoholic beverages to any person the employee considers to meet one or more of the conditions described in Subsection 32A-14a-102(1).

(2) Any employer who terminates an employee or imposes sanctions on the employee contrary to this section is considered to have discriminated against that employee and is subject to the conditions and penalties set forth in Title 34A, Chapter 5, Utah Antidiscrimination Act.

32A-14a-104. Governmental immunity.

No provision of this title creates any civil liability on the part of the state or its agencies and employees, the commission, the department, or any political subdivision arising out of their activities in regulating, controlling, authorizing, or otherwise being involved in the sale or other distribution of alcoholic beverages.

32A-14a-105. Action for contribution by provider of alcoholic beverages.

(1)(a) Except as provided in Subsections (2) and (3), a person, as defined under Subsection 32A-14a-102(1), (2), or (3), against whom an award has been made under this chapter, may bring a separate cause of action for contribution against any person causing the injury and damage.

(b) The maximum amount for which any person causing the injury and damage may be liable to any person seeking contribution is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that person causing the injury and damage.

(2) This action for contribution under this section may not be brought against:

(a) any person entitled to recovery as described in Subsection 32A-14a-102(1)(a)(i) or (ii); or

(b) any person entitled to recover as described in Subsection 32A-14a-102(2)(a)(i) or (ii).

(3) An action for contribution under this section may not diminish the amount of recovery for injury or damages awarded and received to any person entitled to recover as described in Subsection 32A-14a-102(1)(a)(i) or (ii) or 32A-14a-102(2)(a)(i) or (ii):

(a) in a cause of action brought under this chapter; or

(b) in a separate cause of action for injury and damage that is not brought under this chapter.

TITLE 32A- ALCOHOLIC BEVERAGE CONTROL ACT

32A-1-401. ALCOHOL TRAINING AND EDUCATION -- REVOCATION OR SUSPENSION OF LICENSES.

(1) The commission may suspend, revoke, or not renew the license of any licensee if any of the following persons, as defined in Section 62A-15-401, fail to complete the seminar required in Section 62A-15-401:

- (a) a person who manages operations at the premises of the licensee;
- (b) a person who supervises the serving of alcoholic beverages to a customer for consumption on the premises of the licensee; or
- (c) a person who serves alcoholic beverages to a customer for consumption on the premises of the licensee.

(2) A city, town, or county in which an establishment conducts its business may suspend, revoke, or not renew the business license of the establishment if any person described in Subsection (1) fails to complete the seminar required in Section 62A-15-401.

R81. Alcoholic Beverage Control, Administration.

R81-1-12. Alcohol Training and Education Seminar.

(1) The alcohol training and education seminar, as described in Section 62A-15-401, shall be completed by every individual of every new and renewing licensee under title 32A who:

- (a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;
- (b) is employed to manage or supervise the service of alcoholic beverages; or
- (c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.

(2) Persons described in subsection 1(a) and (b) must complete the training within 30 days of commencing employment. Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).

(3) Each licensee shall maintain current records on each individual indicating:

- (a) date of hire, and
- (b) date of completion of training.

(4) The seminar shall include the following subjects in the curriculum and training:

- (a) alcohol as a drug and its effect on the body and behavior;
- (b) recognizing the problem drinker;
- (c) an overview of state alcohol laws;
- (d) dealing with problem customers; and
- (e) alternate means of transportation to get a customer safely home.

(5) Persons required to complete the seminar shall pay a fee to the seminar provider.

(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

(7) Persons who are not in compliance with subsection (2) may not:

- (a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or
- (b) engage in any activity that would constitute managing operations at the premises of a licensee.



**U.S. DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**

**REMINDER
Retailers Of Beverage Alcohol Products**

If you sell beverage alcohol as part of your business, you must pay an annual special occupational tax. Beverage alcohol means distilled spirits, wine, beer, mixed drinks, and beer or wine coolers. This tax applies to persons who sell on or off premises or who provide alcoholic beverages as part of the cost of an item or service. You may owe this tax even when you will not make a profit or when you are exempt from income tax.

Detailed information, forms, and taxpayer assistance, is available at web site of the ALCOHOL AND TOBACCO TAX AND TRADE BUREAU:

<http://www.ttb.gov/alcohol/retailers/index.htm>

You must file and pay the special occupational tax on form ATF F 5630.5. You can print or download ATF Form 5630.5 or you can request a packet with the form and instructions by calling the Alcohol and Tobacco Tax and Trade Bureau's toll-free number at 800-937-8864 or local to 513-684-2979.

(REVISED APRIL 22, 2005)

Suspension of Special Occupational Tax Payments

Washington, D.C. - On October 22, 2004, H.R. 4520, the American Job Creations Act of 2004, was signed into law. As part of this act, the payment of Special Occupational Tax (SOT) will be suspended for certain businesses.

Although most taxpayers no longer will have to pay this tax during the suspension period, others will still be required to continue paying, and all taxpayers must still file the SOT Tax Return (TTB Form 5630.5) annually with the Alcohol and Tobacco Tax and Trade Bureau (TTB).

Currently, SOT is due by July 1 of every year for most businesses engaged in alcohol and tobacco industries at the manufacturing, wholesaling/importing, and retailing levels (tobacco retailers are not included).

With this new law, most SOT taxpayers will no longer be required to pay this tax for the period beginning July 1, 2005. The suspension of the SOT requirement will last three years and ends on June 30, 2008. No SOT is due for operations conducted between these dates.

Payment of SOT will no longer be required from producers, wholesalers, importers, and retailers of alcohol beverages, as well as manufacturers of non-beverage products.

SOT will remain due by Tax-Free Alcohol Users and Specially Denatured Alcohol Users and Dealers as well as Tobacco Products Manufacturers and Tobacco Export Warehouse Proprietors.

For all industry members, SOT remains due and payable for all persons in business and any new business until July 1, 2005. Any liabilities up until that date will still be due, even during the suspension period.

If you have questions regarding the suspension of SOT, please contact TTB's National Revenue Center at 1-(800) 937-8864 or (513) 684-2979.

R81-1-25. Sexually-Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to:

(a) the police powers of the state under 32A-1-103 to regulate the sale, service and consumption of alcoholic beverages in a manner that protects the public health, peace, safety, welfare, and morals;

(b) the commission's powers and duties under 32A-1-107 to prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored; and

(c) 32A-4-106(22), 32A-4-307(22), 32A-5-107(40), 32A-7-106(5), 32A-10-206(14), and 32A-10-306(5) that prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the commission and require them to perform only upon a stage or in a designated area approved by the commission.

(2) Purpose. This rule:

(a) establishes reasonable and uniform guidelines governing the time, place and manner of operation of premises regulated by the commission that have sexually-oriented entertainers so as to reduce the adverse secondary effects that such premises have upon communities, and to protect the health, peace, safety, welfare, and morals of the residents of those communities;

(b) establishes guidelines used by the commission to approve stages or designated performance areas where sexually-oriented entertainers may perform;

(c) establishes guidelines for licensees and permittees to control the attire and conduct of sexually-oriented entertainers when the entertainers mingle with patrons or other persons in premises regulated by the commission; and

(d) shall be construed to protect the governmental interests identified by this rule in a manner consistent with protections provided by the constitutions of the United States and the state of Utah.

(3) Definitions.

(a) "Licensee" or "permittee" means a retailer authorized by the commission to sell, serve, and allow consumption of alcoholic beverages on its premises regardless of whether the retailer also holds a locally-issued sexually-oriented business license.

(b) "Semi-nude" means a state of dress in which opaque attire, costume, or clothing covers no more than the nipple and areola of the female breast and the male or female genitals, pubic area, and anus, which covering of the genitals, pubic area, and anus is no narrower than four inches (4") wide in the front, five inches (5") wide in the back, and does not taper to less than one inch (1") wide at the narrowest point.

(c) "Sexually-oriented entertainer" means any person who appears at or performs on behalf of or at the request of a licensee or permittee on a premises regulated by the commission on a contractual or voluntary basis, whether or not the person is designated an employee, independent contractor, agent, or otherwise of the licensee or permittee, for the entertainment of patrons, and who appears semi-nude.

(d) "Straddle dancing" means the use by any sexually-oriented entertainer of any part of his or her body to touch the genitals, pubic area, buttocks, anus or female breast of any other person. Conduct shall be "straddle dancing" regardless of whether the "touch" is direct or through attire, costume, or clothing. "Straddle dancing", shall include but not be limited to conduct commonly referred to by the terms "lap dancing", "table dancing", and "face dancing".

(4) Application of Rule.

(a) A licensee or permittee shall not allow:

(i) a sexually-oriented entertainer to appear or perform except on a stage or in a performance area that complies with this rule, and has been approved by the commission;

(ii) a sexually-oriented entertainer, while in the portion of the premises used by patrons, to be dressed in other than opaque clothing which covers and conceals the entertainer's performance attire or costume from the top of the breast to the knee;

(iii) a sexually-oriented entertainer to engage in straddle dancing with another person on the premises;

(iv) a sexually-oriented entertainer to touch a patron during the entertainer's performance, or while the entertainer is dressed in performance attire or costume;

(v) a patron to be on the stage or in the performance area while a sexually-oriented entertainer is appearing or performing on the stage or in the performance area;

(vi) a patron to touch a sexually-oriented entertainer during the entertainer's performance, or while the entertainer is dressed in performance attire or costume; or

(vii) a patron to place money or any other object on or within the costume or the person of any sexually-oriented entertainer.

(b) Nothing herein precludes a local authority from being more restrictive with respect to attire and conduct of sexually-oriented entertainers in premises regulated by the commission.

(c) Stage requirements.

(i) The following shall submit for commission approval a floor-plan containing the location of any stage or performance area where sexually-oriented entertainers perform:

(A) an applicant for a license or permit from the commission who intends to have sexually-oriented entertainment on the premises;

(B) a current licensee or permittee of the commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current licensee or permittee of the commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the commission.

(ii) The commission may approve a stage or performance area where sexually-oriented entertainers may perform only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or [øæ] the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of Sections (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers or performers will perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.